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Promotion and protection of human rights: human rights situations and reports of special rapporteurs and representatives

Austria, Bangladesh, ** **Belgium, Bulgaria, Canada, Croatia, Cyprus, Czechia, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, United Kingdom of Great Britain and Northern Ireland and United States of America: draft resolution**

Situation of human rights in Myanmar

The General Assembly,

Guided by the Charter of the United Nations and the Universal Declaration of Human Rights,[1] the International Covenants on Human Rights,[2] the Convention on the Rights of the Child[3] and other relevant international law and human rights law instruments,

Noting the importance of the role of regional organizations in efforts to achieve pacific settlement of local disputes, as stipulated in Chapter VIII of the Charter,

Reaffirming its previous resolutions on the situation of human rights in Myanmar, the most recent of which being resolution 72/248 of 24 December 2017, and recalling the resolutions and decisions of the Human Rights Council, the most recent of which being resolutions 39/2 of 27 September 2018[4] and 37/32 of 23 March 2018[5] and decision S-27/1 of 5 December 2017,[6] and the presidential statement issued by the Security Council on 6 November 2017,[7]

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* Reissued for technical reasons on 7 November 2018.

** On behalf of the States that are members of the Organization of Islamic Cooperation.

[1] Resolution 217 A (III).

[2] Resolution 2200 A (XXI), annex.

[3] United Nations, *Treaty Series*, vol. 1577, No. 27531.

[4] See *Official Records of the General Assembly, Seventy-third Session, Supplement No. 53A* (A/73/53/Add.1), chap. II.

[5] Ibid., *Supplement No. 53* (A/73/53), chap. IV.

[6] Ibid., chap. III.

[7] S/PRST/2017/22.

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Welcoming the appointment by the Secretary-General of a Special Envoy on Myanmar, the cooperation of the Government of Myanmar with the Special Envoy and the agreement on the opening of the office of the Special Envoy in Nay Pyi Taw, and commending the work of the Special Envoy since her appointment, including her recent visits to the region and her consultations with a range of interlocutors,

Welcoming also the mandate of the independent international fact-finding mission on Myanmar, established by the Human Rights Council in its resolution 34/22, and the decision by the Council in its resolution 39/2 to extend it,

Welcoming the decision by the Human Rights Council, in its resolution 39/2, to establish an ongoing independent mechanism to collect, consolidate, preserve and analyse evidence of the most serious international crimes and violations of international law committed in Myanmar since 2011 and to prepare files in order to facilitate and expedite fair and independent criminal proceedings, in accordance with international law standards, in national, regional or international courts or tribunals that have, or may in the future have, jurisdiction over these crimes, in accordance with international law,

Welcoming also the work of the independent international fact-finding mission on Myanmar, deeply regretting that the Government of Myanmar has not cooperated with the fact-finding mission, and urging the Government to grant it and other human rights mechanisms full, unrestricted access to all areas and interlocutors,

Strongly regretting the decision of the Government of Myanmar to discontinue cooperation with the Special Rapporteur on the situation of human rights in Myanmar and to deny her access to Myanmar since January 2018, and calling upon the Government of Myanmar to resume its cooperation with the Special Rapporteur without delay,

Welcoming the report of the Special Rapporteur on the situation of human rights in Myanmar,[8]

Expressing grave concern at continuing reports of serious human rights violations and abuses in Myanmar, in particular in Rakhine State, as well as in Kachin and northern Shan States,

Continuing to underline the need for the armed forces of Myanmar to take immediate steps to protect all persons within the country, including those belonging to the Rohingya community, by respecting international law, including human rights law, and ending the violence, and calling for urgent steps to ensure independent and impartial investigations into all human rights violations and abuses and that those displaced by violence are able to voluntarily return in safety and dignity to their places of origin in a sustainable manner,

Reiterating its deep distress at reports that unarmed Rohingya in Rakhine State are being subjected to the excessive use of force and violations of human rights by the military and security forces, including extrajudicial, summary or arbitrary killings, rape and other forms of sexual and gender-based violence, arbitrary detention and the enforced disappearance of Rohingya civilians in Rakhine State, and at reports of large-scale destruction of homes and systematic evictions in northern Rakhine State, including the use of arson and violence, as well as the unlawful use of force by non-State actors,

Reiterating its grave concern that, in spite of the fact that Rohingya Muslims lived in Myanmar for generations prior to the independence of Myanmar, they were

[8] A/73/332.

made stateless by the enactment of the 1982 Citizenship Law and were eventually disenfranchised, in 2015, from the electoral process,

Reaffirming that the denial of citizenship status and related rights to Rohingya Muslims and others, including voting rights, is a serious human rights concern,

Noting with deep concern that the targeted violence against the Rohingya Muslims and others in Rakhine State has forced over 723,000 people — most of them women and children — to flee to Bangladesh since 25 August 2017,

Noting with deep concern also the security, human rights and humanitarian situation in Rakhine, Kachin and Shan States and the continued serious violations and abuses of human rights of Rohingya Muslims and of persons belonging to other minorities, as well as the statelessness, disenfranchisement, economic dispossession, marginalization, deprivation of livelihood and restrictions on freedom of movement for persons belonging to the Rohingya community, including the confinement of approximately 120,000 people in camps for internally displaced persons, the majority of whom rely entirely on foreign aid,

Noting the stated commitment of the Government of Myanmar to implementing the recommendations of the Advisory Commission on Rakhine State, regretting that over the past year the Government of Myanmar has not yet implemented the recommendations, and calling on the Government of Myanmar to implement fully the recommendations of the Commission, including those regarding inclusive development, freedom of movement, human rights, security sector reform, humanitarian access and access by the media, and a pathway to full citizenship for all individuals without discrimination and regardless of ethnicity or religion, and to address the underlying causes of the situation in Rakhine State,

Acknowledging with grave concern statements made by the Secretary-General on 26 February 2018, the United Nations High Commissioner for Human Rights on 7 March 2018, the Assistant Secretary-General for Human Rights on 6 March 2018 and the Secretary-General of the Organization of Islamic Cooperation on 27 February 2018, on the situation of human rights in Rakhine State, in which they referred to ethnic cleansing in Myanmar, and recalling the resolution adopted by the Council of Foreign Ministers of the Organization of Islamic Cooperation at its forty-fifth session on the establishment of an Organization of Islamic Cooperation ad hoc ministerial committee on accountability for human rights violations against the Rohingyas and the recommendations made by the participants in the international consultation meeting on the Rohingya crisis, which was held on 6 July 2018 in Ankara,

Welcoming the visit of the Security Council to Rohingya camps in Cox's Bazar, Bangladesh, from 28 April to 1 May 2018, and sharing its grave concern at the scale of the humanitarian crisis on the ground and its emphasis on finding a solution to the current situation of the Rohingya,

Welcoming also the visit of the Secretary-General to Rohingya camps in Cox's Bazar, Bangladesh, in July 2018, recalling his statement to the Security Council on 28 August 2018, in which he referred to the crisis in Rakhine State as "one of the world's worst humanitarian and human rights crises", and commending the Secretary-General's continued attention to this situation,

Expressing concern at the reports of continued intimidation and violence against the remaining Rohingya Muslim population and other minority groups in Myanmar,

Recalling the responsibility of States to comply with their relevant obligations, to prosecute those responsible for violations of international law, including international humanitarian law, international human rights law, international criminal law and international refugee law, as well as abuses of human rights law, and to

provide an effective remedy to any person whose rights have been violated, with a view to ending impunity,

Reiterating the urgent need to ensure that all those responsible for crimes related to violations and abuses of international human rights law and international criminal law are held to account through credible and independent national, regional or international criminal justice mechanisms, while recalling the authority of the Security Council in this regard,

Noting the establishment of an independent commission of enquiry by the Government of Myanmar on 30 July 2018 as a step towards ensuring accountability for the human rights violations and abuses committed in Rakhine State, provided that the commission of enquiry, unlike previous national investigative mechanisms, is able to work with independence, impartiality, transparency and objectivity,

Noting also the initial steps taken by the Government of Myanmar to improve the situation in Rakhine State for all communities, including the setting up of the Central Committee for the Implementation of Peace, Stability and Development in Rakhine State and of the Union Enterprise for Humanitarian Assistance, Resettlement and Development in Rakhine, while underscoring the need for expedited implementation of key reforms, including access to citizenship and freedom of movement, to create the conditions necessary for refugees and other forcibly displaced persons to return to their places of origin voluntarily, safely and with dignity,

Re-emphasizing the urgent right of all refugees and displaced persons to return home in safety, dignity and in a voluntary and sustainable manner,

Noting the signing, on 6 June, of a memorandum of understanding between Myanmar and the United Nations Development Programme and the Office of the United Nations High Commissioner for Refugees on assistance in the repatriation process of displaced persons from Rakhine State,

Noting the signing of bilateral instruments between Bangladesh and Myanmar and the subsequent formation of the joint working group, while underlining the need to create an environment conducive to the safe, voluntary, dignified and sustainable return of the displaced Rohingya, including assurances about the non-occurrence of violence, the rights related to citizenship and mobility and the accountability of perpetrators and justice for victims,

Expressing deep concern regarding the continuing departure of members of the remaining Rohingya population and persons belonging to other minorities to Bangladesh, and strongly urging the Government of Myanmar and the armed forces to lift the curfew order in Rakhine State, in particular to ensure freedom of movement and the safety and security of all persons without distinction of any kind, and to put an end to the extortion and intimidation of the Rohingya population,

1. *Expresses grave concern* at the findings of the independent international fact-finding mission on Myanmar[9] that there is sufficient information to warrant investigation and prosecution so that a competent court may determine liability for genocide in relation to the situation in Rakhine State, that crimes against humanity and war crimes have been committed in Kachin, Rakhine and Shan States, including murder, imprisonment, enforced disappearance, torture, rape, sexual slavery and other forms of sexual violence, persecution and enslavement, that children were subjected to and witnessed serious human rights violations, including killing, maiming and sexual violence, that there are reasonable grounds to conclude that serious crimes under international law have been committed that warrant criminal investigation and

[9] See A/HRC/39/64.

prosecution and that the military has consistently failed to respect international human rights law and international humanitarian law;

2. *Strongly condemns* all violations and abuses of human rights in Myanmar, as set out in the report of the fact-finding mission,[9] including the widespread, systematic and gross human rights violations and abuses committed in Rakhine State, including the presence of elements of extermination and deportation and the systematic oppression and discrimination that the fact-finding mission concluded may amount to persecution and to the crime of apartheid, also strongly condemns the grossly disproportionate response of the military and the security forces, deplores the serious deterioration of the security, human rights and humanitarian situation and the exodus of more than 723,000 Rohingya Muslims and other minorities to Bangladesh and the subsequent depopulation of northern Rakhine State, and calls upon the Myanmar authorities to ensure that those responsible for violations of international law, including human rights violations and abuses, are held accountable and removed from positions of power;

3. *Calls* for a full and independent investigation of the human rights violations and abuses committed, including against the Rohingya Muslims and persons belonging to other minorities, as reported by various United Nations bodies, including the Human Rights Council, the fact-finding mission and the Special Representative of the Secretary-General on Sexual Violence in Conflict, to ensure that those responsible for such crimes are held accountable;

4. *Notes* the establishment of an independent commission of enquiry by the Government of Myanmar as a step towards ensuring accountability for investigating alleged violations and abuses of human rights in the Rakhine State, provided that the Commission, unlike preceding national investigative mechanisms, is able to work with independence, impartiality, transparency and objectivity in a credible way in line with international standards, and encourages the commission of enquiry to seek support and expertise from the United Nations and the international community;

5. *Calls* for the expeditious entry into operation of the independent mechanism established by the Human Rights Council and steps to secure its effective functioning as soon as possible;

6. *Notes* the recommendation by the fact-finding mission on the conduct of a comprehensive, independent inquiry into the involvement of the United Nations in Myanmar since 2011, and encourages the United Nations system to follow up on the issues raised and to ensure that all engagement with Myanmar takes into account, and addresses, human rights concerns;

7. *Notes* the holding of the third session of the Twenty-first Century Panglong Conference from 11 to 16 July 2018 and the progress made towards the principles of a future democratic federal union of Myanmar, while calling for further steps, including an immediate cessation of fighting and hostilities, of targeting civilians and of all violations and abuses of international human rights law and international humanitarian law in northern Myanmar and an inclusive and comprehensive national political dialogue ensuring the full, effective and meaningful participation of all ethnic groups, women and young people, and persons with disabilities, as well as civil society, with the objective of achieving lasting peace;

8. *Reiterates* the urgent call upon the Government of Myanmar:

(a) To take the necessary measures to address the spread of discrimination and prejudice and to combat the incitement of hatred against Rohingya Muslims and other persons belonging to minorities, including Kachin and Shan, by publicly condemning such acts and combating hate speech, while fully respecting international human rights law, as well as by promoting interfaith dialogue in cooperation with the

international community and encouraging political and religious leaders in the country to work towards reconciliation among communities and national unity through dialogue;

(b) To expedite efforts to eliminate statelessness and the systematic and institutionalized discrimination against members of ethnic and religious minorities, in particular relating to the Rohingya Muslims, by, inter alia, reviewing the 1982 Citizenship Law, which has led to deprivation of human rights, by ensuring equal access to full citizenship through a transparent, voluntary and accessible procedure and to all civil and political rights, by allowing for self-identification, by amending or repealing all discriminatory legislation and policies, including discriminatory provisions of the set of "protection of race and religion laws" enacted in 2015 covering religious conversion, interfaith marriage, monogamy and population control, and by lifting all local orders restricting rights to freedom of movement and access to civil registration, health and education services and livelihoods;

(c) To dismantle the camps for internally displaced persons in Rakhine State, ensuring that the return and relocation of internally displaced persons is carried out in accordance with international standards and best practices, including as set forth in the Guiding Principles on Internal Displacement;[10]

(d) To create the conditions necessary for the safe, voluntary, dignified and sustainable return of refugees, to proactively apprise the prospective returnees about developments in this regard and to formulate a time-bound road map for their implementation;

(e) To allow full and unhindered access for the delivery of humanitarian assistance, including gender-responsive assistance, by humanitarian actors, including the United Nations and its international partners, as well as by regional organizations, including, but not limited to, the Coordinating Centre for Humanitarian Assistance on Disaster Management of the Association of Southeast Asian Nations, to affected persons and communities, without fear of reprisals, intimidation or attack, and in this regard urges the Government of Myanmar to implement the various international cooperation agreements that have not yet been fully implemented for the distribution of humanitarian aid to all affected areas, including Rakhine, Kachin and Shan States, without discrimination;

(f) To sustain the democratic transition of Myanmar by bringing all national institutions, including the military, under the democratically elected civilian government;

(g) To ensure full protection of the human rights and fundamental freedoms of all persons in Myanmar, including Rohingya Muslims and persons belonging to other minorities, in an equal and dignified manner in order to prevent further instability and insecurity, alleviate suffering, address the root causes of the situation and forge a viable, lasting and durable solution;

(h) To fulfil its human rights obligations and commitments to protect the rights to freedom of expression, association and peaceful assembly, to create and maintain a safe and enabling environment for civil society and independent media and to ensure the safety, security and freedom of journalists, media workers, civil society activists and human rights defenders, including while they are engaged in their work;

9. *Underscores* the importance of providing protection and assistance specifically tailored to women and girls and to the victims of sexual violence;

[10] E/CN.4/1998/53/Add.2, annex.

10. *Reiterates its deep concern* at the continued plight of Rohingya refugees and forcibly displaced persons living in Bangladesh and in other countries, and appreciates the commitment by the Government of Bangladesh to provide temporary shelter, humanitarian assistance and protection to them;

11. *Expresses grave concern* at the potential retraumatization of survivors of human rights violations and abuses, particularly child survivors and sexual violence survivors, and calls on all actors engaging in documentation work to follow international human rights standards and the "do-no-harm" principle for evidence-gathering in order to respect the dignity of survivors and to avoid retraumatization;

12. *Encourages* further cooperation between Myanmar and Bangladesh in order to expedite the establishment of conditions that will allow for the safe, sustainable and voluntary return of Rohingya refugees and forcibly displaced persons, with the full support and meaningful involvement of the international community, including the United Nations and its funds, programmes and agencies;

13. *Also encourages* the international community to (a) assist Bangladesh in providing humanitarian assistance to Rohingya refugees and forcibly displaced persons until such time as they are voluntarily repatriated to Myanmar in safety and dignity; (b) assist Myanmar in the provision of humanitarian assistance to affected persons of all communities who have been internally displaced, including those in camps for internally displaced persons within Rakhine State;

14. *Urges* the Government of Myanmar to continue to work with the Government of Bangladesh and the United Nations, including the United Nations Development Programme and the Office of the United Nations High Commissioner for Refugees, to allow the voluntary return of all refugees and forcibly displaced persons in conditions of safety and dignity to their places of origin in Myanmar, including through the implementation of the memorandum of understanding signed between the Government of Myanmar and the United Nations Development Programme and the Office of the United Nations High Commissioner for Refugees;

15. *Recognizes with appreciation* the assistance and support of the international community, including regional organizations, in particular the Association of Southeast Asian Nations, and the countries neighbouring Myanmar, and encourages support for the Government of Myanmar in the fulfilment of its international human rights obligations and commitments, the implementation of its democratic transition process, inclusive socioeconomic development and sustainable peace, as well as its national reconciliation process involving all relevant stakeholders;

16. *Emphasizes* the need for the Governments of Myanmar and Bangladesh, as well as the United Nations, to ensure the voluntariness of the repatriation process and to ensure that the concerns, specific needs and requests of Rohingya refugees and other forcibly displaced persons are taken into account;

17. *Urges* the international community to support the underfunded 2018 joint response plan for the Rohingya humanitarian crisis to ensure adequate resources for addressing the humanitarian crisis;

18. *Requests* the Secretary-General:

(a) To continue to provide his good offices and to pursue his discussions relating to Myanmar, involving all relevant stakeholders, and to offer assistance to the Government of Myanmar;

(b) To extend the appointment of the Special Envoy on Myanmar and submit the report of the Special Envoy covering all relevant issues addressed in the present resolution to the General Assembly at its seventy-fourth session;

(c) To provide all assistance necessary to enable the Special Envoy to effectively discharge her mandate and to brief Member States every six months, or as otherwise requested or as warranted by the situation on the ground;

(d) To identify ways in which the existing mandates can more effectively deliver in their respective areas of responsibility and can complement each other's work through enhanced coordination;

(e) To call the continued attention of the Security Council to the situation in Myanmar with concrete recommendations for action towards resolving the humanitarian crisis, promoting the safe, dignified, voluntary and sustainable return of Rohingya refugees and forcibly displaced persons and ensuring accountability for those responsible for human rights violations;

19. *Requests* that the Special Envoy participate by way of interactive dialogue in the seventy-fourth session of the General Assembly;

20. *Decides* to remain seized of the matter, inter alia, on the basis of the reports of the Secretary-General, the fact-finding mission, the ongoing international mechanism, the Special Rapporteur of the Human Rights Council and the Special Envoy on Myanmar.